

City of Horseshoe Bay, Texas

**TEMPORARY MORATORIUM ON NEW CONSTRUCTION
ZONES 13 & 14**

ORDINANCE NO. ORD 06-04-27

AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS, CREATING VOLUME __, ARTICLE __, CHAPTER __ OF THE MUNICIPAL CODE OF ORDINANCES, ESTABLISHING A TEMPORARY MORATORIUM SOLELY FOR ZONES 13 AND 14 WITHIN THE CITY LIMITS, PROVIDING FOR THE TEMPORARY SUSPENSION OF THE ACCEPTANCE, REVIEW AND APPROVAL OF SUBDIVISION PLATS, PLAT AMENDMENTS, REPLATS, SITE DEVELOPMENT PERMITS, AND REZONING REQUESTS FOR NEW CONSTRUCTION THEREIN FOR COMMERCIAL, RESORT, RECREATIONAL OR RESIDENTIAL PURPOSES; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; SEVERABILITY; EFFECTIVE DATE; DURATION; TEMPORARY SUSPENSION OF CERTAIN APPROVALS; AND ENFORCEMENT, INCLUDING CRIMINAL FINES AND CIVIL PENALTIES;

WHEREAS, the community commonly known as Horseshoe Bay, located in Llano and Burnet Counties, was incorporated pursuant to the laws of the State of Texas as a Type A, General-Law municipality at a special election conducted by Llano County on September 10, 2005; and

WHEREAS, a primary impetus for the incorporation of the City of Horseshoe Bay was to provide for comprehensive land planning and regulation in order to preserve property values, protect the community, and maintain a high quality of life; and

WHEREAS, the City Council of the City of Horseshoe Bay seeks to provide for the orderly and safe development of land and use of property within its City Limits (i.e., incorporated municipal boundary) and extraterritorial jurisdiction (ETJ); and

WHEREAS, the City has adopted a Comprehensive Development plan; and

WHEREAS, development is being planned for Zone 13, Cap Rock Zone, and 14, HSB Boulevard Corridor Zone, of the City, as those zones are described in the City's Comprehensive Development Plan; and

WHEREAS, representatives of the City Council have met with principal developers and property owners in Zones 13 and 14 and have established an informal understanding that such discussions related to such development may lead to a Planned Development District; and

WHEREAS, the City Council desires to exercise its land use and development authority in a manner that will establish reasonable regulations for such development; and

WHEREAS, the City Council intends to work in a cooperative manner with the owners of property in Zones 13 and 14 with regard to such development; and

WHEREAS, the City Council finds that there are no restrictive covenants or deed restrictions in Zone 13 or Zone 14; and

WHEREAS, the City Council finds that a temporary moratorium is reasonable and prudent in order to protect the *status quo* in Zones 13 & 14;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:

1. FINDINGS OF FACT

The foregoing findings of fact are hereby approved and incorporated herein for all purposes.

2. ENACTMENT

Volume ____, Article ____, Chapter ____ of the City of Horseshoe Bay Code of Ordinances is hereby established so as to read in accordance with Exhibit “A”, attached hereto and incorporated into this Ordinance.

3. SEVERABILITY

The phrases, sentences, paragraphs and sections of this Ordinance are severable. If any phrase, sentence, paragraph or section of this Ordinance is declared unconstitutional or ineffective, such unconstitutionality or ineffectiveness shall not affect the remaining phrases, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

PASSED AND APPROVED this, the 27th day of April, 2006, by a vote of 4 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the City of Horseshoe Bay, Texas.

THE CITY OF HORSESHOE BAY

Robert W. Lambert, Mayor

ATTEST:

Toni Vanderburg, City Secretary

Exhibit “A”

VOLUME: ____

ARTICLE ____: DEVELOPMENT

CHAPTER ____: MORATORIUMS

SECTION 1. ENACTMENT PROVISIONS

1.1. Popular Name

This Chapter shall be cited as the “Temporary Moratorium Ordinance.”

1.2. Purpose

This Chapter is enacted so that the City Council may promote the public health, safety, morals and general welfare of the City and its ETJ through the reasonable regulation of land development. The purpose of this Temporary Moratorium is to preserve the *status quo* within two planning zones (13 & 14) that do not currently have restrictive covenants in place, in order to allow the City Council to conduct research, consult experts, confer with owners of Zones 13 and 14, receive public input, establish reasonable policies, and prepare the necessary ordinance amendments. This Moratorium enables the City Council to adopt the appropriate administrative and regulatory rules and procedures. During the brief duration of this regulatory freeze period, the City Council, along with City staff, will create, evaluate and consider adoption of the following ordinances, at a minimum: Zoning regulations, Subdivision rules, Site Development procedures, and Building Codes.

1.3. Application

This Chapter applies to new construction upon all tracts within Zones 13 & 14, both of which are within the city limits. This Chapter does not apply to remodeling and expansion planned for and disclosed to the City for the HSB Resort Realty building and the Yacht Club.

SECTION 2. DEFINITIONS

2.1. General

Words and phrases used herein shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context requires otherwise.

Specific

Addition: an added feature to a building, structure or tract that enhances or compliments the existing buildings or structures on the tract but does not increase the interior square footage of any existing building.

Building: an improvement or change to the property created to shelter human activity and which substantially reduces the permeability of the natural ground underneath the building or structure to absorb rainfall. This term includes a dwelling, house, barn, church, hotel, or similar structure created to shelter human activity. The term includes the installation of manufactured buildings.

City: the City of Horseshoe Bay, an incorporated municipality located in Llano and Burnet Counties, Texas.

Clear: to make a material change in the character of the land, including but not limited to modification of the natural grade or slope of the land. The term includes the removal of trees that are equal to or greater than eight inches (8”) in diameter when measured no more than four feet (4’) above existing grade.

Commercial Use: establishments engaged in the sale, rental, servicing and distribution of goods and the provision of services. For purposes of this moratorium, the term includes dining, lodging, retail and wholesale businesses.

Construct: to excavate or grade property in connection with construction of a foundation for any improvement to be located on the land. The term also means to form a building by combining materials or parts.

Develop: to make a material change in the use or character of the land, including but not limited to the placement of any building or other structure on the land.

ETJ: the extraterritorial jurisdiction of the City of Horseshoe Bay, as established by the Texas Local Government Code.

Expand: to add any square footage of impervious cover on the property, regardless of whether such addition will be covered or uncovered.

Land Use Classification: how a tract of real property is utilized by the owner, tenant, or occupant. For purposes of this Chapter, the classifications are as follows: agricultural, commercial, industrial, manufacturing, recreational, resort, and/or residential purposes

New Construction: The creation or erection of buildings, facilities or structures on or after the adoption date of this Chapter. The term encompasses construction or development projects that did not lawfully commence prior to the adoption date of this Chapter. The term excludes Preexisting Buildings.

Ordinary Maintenance or Maintenance: activities relating to a property that would be considered ordinary or common for maintaining the property, including but not limited to replacement of similar or identical materials, or painting. The term expressly omits activities involving the expansion, modification, enlargement, reduction, renovation or remodeling of buildings or structures.

Person: any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.

Preexisting Buildings: the construction or development projects that lawfully commenced prior to the adoption date of this Chapter. If construction or development of the preexisting building, facility or structure was subject to the regulatory authority of a federal, state, or local government agency, the construction or development activities must have been performed in accordance with a validly issued permit or other applicable authorization in order to qualify as a Preexisting Building under this Chapter.

Recreational Use: establishments engaged in the commercial provision of goods, services, or facilities for relaxation or participation in sporting activities or hobbies.

Repair or Renovation: the maintenance of or the return to a state of utility of a building, site or structure. Renovation also includes remodeling an existing building or structure, whether exterior or interior.

Resort Use: establishments engaged in recreational use for the purpose of attracting tourist and other non-resident commerce, particularly including vacation, temporary, and short-term residency in living quarters.

Structure: those functional constructions made usually for purposes other than creating shelter. The term is used to distinguish these items from buildings.

Tract: an area, parcel, site, piece of land, or property that is the subject of a development application pending or proposed in the city limits or extraterritorial jurisdiction (ETJ).

Zones 13 & 14: the two planning areas as described in the Comprehensive Development Plan for the City of Horseshoe Bay, Texas, adopted March 21, 2006.

3. MUNICIPAL APPROVALS REQUIRED

- 3.1. **Zoning:** It shall be unlawful for any person to build, clear, construct, develop, or erect any new building, facility, site or structure without first making application to the City and receiving the proper zoning of the land or other approval issued by the City. Furthermore, it shall be unlawful for any person to occupy a new building, facility, site or structure without first making application to the City and receiving a Certificate of Occupancy.
- 3.2. **Subdivisions:** It shall be unlawful for any person to divide real property for purposes of conveyance or the laying out of streets or utilities dedicated to the public without first making application to the City and receiving plat approval.
- 3.3. **Site Development:** It shall be unlawful for any person to clear real property for purposes of preparing a tract for construction activities without first making application to the City and receiving a Site Development Permit. It shall be unlawful for any person to install utility lines, construct streets or driveways, pave parking spaces, or install drainage improvements without first making application to the City and receiving a Site Development Permit.
- 3.4. **Building:** It shall be unlawful for any person to build, construct, develop, or erect any building, facility, site or structure within the city limits without first making application to the City and receiving a Building Permit. This prohibition applies to the expansion of existing buildings, facilities or structures if the expansion increases total square footage ten percent (10%) or more.

4. TEMPORARY SUSPENSION

4.1. Moratorium

The following activities are temporarily suspended:

- (a) **Zoning:** The City's acceptance, review and approval of requests for zoning, rezoning or variances.
- (b) **Subdivisions:** The City's acceptance, review and approval of plat, replat, and plat amendment applications.
- (c) **Site Development:** The City's acceptance, review and approval of Site Development Permit applications.
- (d) **Building Permit:** The City's acceptance, review and approval of Building Permit applications.

4.2. Effective Date

This Temporary Moratorium shall take effect immediately from and after its passage.

4.3. Duration

4.3.1. Initial Period: The Temporary Moratorium established by this Chapter became effective April 18, 2006, for an initial period of fourteen (14) days, and shall expire on May 2, 2006.

4.3.2. Findings Justifying Continuation of Temporary Moratorium: The City Council finds the following to be true:

- (a) Notice of a public hearing on the moratorium to be conducted on April 27, 2006 at City Hall was posted no less than 72 hours prior to such public hearing; and
- (b) A public hearing to gather input on the moratorium was conducted at City Hall by the City Council on April 27, 2006; and
- (c) The City Council determined that continuation of the moratorium is reasonable and necessary based on the following findings of fact:
 - i. Development is being planned for Zone 13, Cap Rock Zone, and 14, HSB Boulevard Corridor Zone, of the City, as those zones are described in the City's Comprehensive Development Plan;
 - ii. Restrictive covenants or deed restrictions exist in the majority of the City, whereas none exist in Zone 13 or Zone 14;
 - iii. The City Council is in the process of drafting and enacting land use regulations, including zoning and subdivision ordinances, that will apply to the entirety of the City and which are intended to provide land use stability where the same is lacking in Zones 13 and 14, but needs additional time to complete such regulations and ordinances;
 - iv. The City Council will continue to meet with principal developers and land owners in Zones 13 and 14 to engage in discussions that may lead to a Planned Development District, but needs additional time to conduct such discussions and determine if a Planned Development District is in the best interest of the City;
 - v. In the absence of restrictive covenants, deed restrictions, land use regulations and ordinances, or a Planned Development District, the City cannot be assured that there is a sufficiency of existing essential public facilities necessary to support development in Zones 13 or 14;
 - vi. The additional time provided by continuation of the Temporary Moratorium will allow the City Council time to both develop suitable land use regulations and to work with the principal developers and land owners in Zones 13 and 14 in order to ensure that the development in Zones 13 and 14 fulfills the goals of such developers and land owners and is in the interest of the City; and
- (d) A majority of the City Council voted that the moratorium be continued.

- 4.4 Duration of Temporary Moratorium:** The Temporary Moratorium established by this Chapter is hereby continued for a period of 120 days, commencing on May 2, 2006, and automatically expiring on August 29, 2006 unless expressly repealed at an earlier date or expressly extended by majority vote of the City Council if such extension is found to be reasonable and necessary.

5. EXEMPTIONS

5.1. Limited Exemptions

The Temporary Moratorium shall not apply to:

- (a) **Legal Nonconforming Uses:** Land use endeavors that were lawfully and actively undertaken prior to the adoption of this moratorium.
- (b) **Grandfathered Development Projects:** Land use or development endeavors that qualify and continue to remain qualified for vested project status under Texas Local Government Code Chapter 245.
- (c) **Small Projects:** Activities consisting of ordinary maintenance or repair to buildings, facilities, sites or structures that existed on the effective date of this Chapter, and the cost of each separate and distinct occurrence of which is less than fifty thousand dollars (\$50,000) total.
- (d) **Renovations or Additions that do not add square footage:** Renovation or addition projects that do not add additional interior square footage to existing buildings.
- (e) **Certain Landscaping, Lighting, and Signs:** Landscaping, lighting and sign renovations, maintenance or additions, the cost of each separate and distinct occurrence of which is less than twenty-five thousand dollars (\$25,000) total.

6. SPECIAL EXCEPTIONS

6.1. Limited Conditions

Special Exceptions to the Temporary Moratorium may be granted by the City Council when the Council determines in writing that one or more of the conditions below are satisfied:

6.1.1. Undue Hardship

- (a) The applicant shall otherwise suffer undue hardship;
- (b) The current federal, state, county or local regulations or restrictive covenants (deed restrictions) are adequate to address the particular type of development and construction proposed by the applicant; and
- (c) It is in the public interest to allow a limited exception to the Temporary Moratorium in the particular instance.

6.1.2. Development Agreement

The tract becomes subject to a valid, written development agreement between the property owner and the City pursuant to which all land use and development matters are addressed.

6.1.3. Planned Development District

The tract becomes subject to a Planned Development District adopted by the City pursuant to negotiations between the property owner and the City through which all land use and development matters are addressed.

6.1.4. Other

A condition that a majority of the City Council votes to approve as a special exception.

SECTION 7. ENFORCEMENT

7.1. Civil & Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Chapter as may be required by governing law. Any person violating any provision of this Chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Chapter is hereby declared to be a nuisance.

7.2. Criminal Prosecution

Any person violating any provision of this Chapter shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this Chapter is violated shall constitute a separate offense. An offense under this Chapter is a misdemeanor.

7.3. Civil Remedies

Nothing in this Chapter shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following: Stop work orders mandating the immediate cessation of all unauthorized activities; injunctive relief to prevent or require conduct necessary for compliance; a civil penalty up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of the Chapter and after receiving notice committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter; and other available relief.